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February 18, 2009

GREETINGS TO: Montana Senate Public Health, Welfare and Safety
Committee members

FROM: Patricia McGeshick, Director, Fort Peck Assiniboiné and Sioux Tribes
Family Violence Resource Center

RE: Resolution, LC 2161-"A Joint Resolution of the Senate and House of
Representatives of the State of Montana Honoring Montana's American
Indian Women by Stopping the Violence Against Them"

I am Patricia McGeshick, a member of the Fort Peck Assiniboiné and Sioux Tribes. For the Past 22 years I have been directing programs and services to victims and working to end violence against women and children in our communities on the Fort Peck Indian Reservation in Northeastern Montana. I am the President of the newly formed Montana Native Women's Coalition with representatives of the seven Indian Reservations in the State of Montana. I am also seated on the Federal Advisory Task Force Title IX under the Violence Against Women Office.

I fully support the Resolution LC 2161-"A Joint Resolution of the Senate and House of Representatives of the State of Montana Honoring Montana's American Indian Women by Stopping the Violence Against them" sponsored by Senator Carol Juneau. Her leadership in taking the initiative for promoting protection for Native Women in Montana is a unique quality. Your passage of the Bill will promote equality for all women in Montana by collaborating, supporting services and resources, and ensuring that the federal government responsibility to investigate and prosecute violent crime on Indian Reservations is a high priority.

Leadership in this critical Bill should rise to next level of supporting Congressional Hearings where victims, Reservation advocates and Tribal leadership can voice the impact of violence towards women and children on Indian Reservations. The outcome would be support for increased justice and accountability by enabling tribal authorities the right to prosecute crimes committed by non-Indian perpetrators on tribal lands, and increase the sentencing guidelines under the Indian Civil Rights Act.

It is unfair that native women on Indian Reservations in Montana continue to be beaten, raped by non-Indian perpetrators where they should feel safe living on their own lands. In working collaboratively and respectfully with Federal, State, and Tribal entities we will be able to help our native sisters heal from generational violence.

Thank you for the opportunity to provide written testimony on behalf of all my native sisters suffering on Indian lands.

SJ26 - Violence Against Native Women

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Domestic Violence/Sexual Assault in Montana Indian Country: Factors that affect Native Victims/Survivors

Short Glossary of Terms:

BIA – Bureau of Indian Affairs
NCAI – National Congress of American Indians
DOJ – Department of Justice
DV – Domestic Violence
SA – Sexual Assault

According to the U.S. Census 2000, there are a total of 66,320 Native People in MT. That's 7% of the total Population of 902,632 in Montana. 19,609 Natives in Montana live OFF reservation. (30%). According to the 2000 US Census, 56% of Native American and Alaska Native people live outside Indian Country. Just under 10% of Native Americans live in large urban centers. The Breakdown of Natives in Montana:

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| * 279 are Alaska Natives | * 2,959 are from Fort Belknap |
| * 2,449 are from Indian Nations outside MT | * 26,172 are Confederated Salish & Kootenai |
| * 10,100 are Blackfeet | * 10,321 from Fort Peck |
| * 6,894 are Crow | * 4,470 are Northern Cheyenne |
| * 2,676 are Chippewa-Cree | |

According to the US Department of Justice, in at least **86%** of reported cases of rape or sexual assault against American Indian and Alaska Native women, the perpetrators are **non-Native** men.

In contrast, the Federal Department Of Justice (DOJ) data shows that for non-Indigenous victims, sexual violence is usually committed within an individual's own race. In 2004, perpetrators in **65.1%** of rapes of white victims were white, and **89.8%** of perpetrators in rapes of African American victims were African American.

- 36% of Native women will experience sexual assault in their lifetimes (about 1 in 3) – 3x higher than women of other ethnic backgrounds.
- 39% of Native women will experience domestic violence in their lifetimes – 2.5x higher than women of other ethnic backgrounds.

Questions of Jurisdiction

Three main factors determine where jurisdictional authority lies:

1. Whether the victim is a member of a federally recognized Indian tribe
2. Whether the accused is a member of a federally recognized Indian tribe
3. Whether the alleged offence took place on tribal land

The answers to these questions determine whether a crime should be investigated by tribal, federal or state police; whether it should be prosecuted by a tribal prosecutor, a state prosecutor (District Attorney) or a federal prosecutor (US Attorney) and whether it should be tried at tribal, state or federal level. Lastly, this determination dictates the



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body of law to be applied to the case: tribal, federal or state. The following chart depicts jurisdiction:

Chart of Jurisdiction

Location	Suspect	Prosecutor
Indian Country	Non-Indian or non-Alaska Native	Federal
Indian Country	American Indian or Alaska Native	Tribal and/or Federal
PL-280 states or AK Native villages	Non-Indian or non-Alaska Native	State
PL-280 states or AK Native villages	American Indian or Alaska Native	Tribal and/or State
State land	Non-Indian or non-Alaska Native	State
State land	American Indian or Alaska Native	State

Effect on Native Victims/Survivors of DV/SA: Crimes of violence against Native women are less likely to be taken seriously or inadequately investigated. Law Enforcement officers do not know whether they have jurisdiction therefore are not likely to pursue an investigation or will refer victims elsewhere.

Cross-Deputization of Law Enforcement Agencies

The information in this section is copied from the "Tribal Relations Report 2008 - The Art of Cooperation" pages 25 and 26.

"Law enforcement on reservations involves multiple jurisdictions and enforcement agencies. The Department of Justice negotiates and executes law enforcement cooperative agreements under the State-Tribal Cooperative Agreements Act, Mont. Code Ann. § 18-11-101–112, and the Federal Indian Law Enforcement Reform Act, § 25 USC § 2801-2809. The Attorney General in his capacity as chief law enforcement officer for the State executes these on behalf of the Montana Highway Patrol. The Counties execute these through their County Commissioners, and implement them through the County Sheriff. The Cities execute these through their chief executive officers. There are three cooperative law enforcement agreements now in effect in



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which the State, through the Highway Patrol, is a party. Each is unique and the Department of Justice should be contacted for further information about any specific agreement.

The Fort Peck Cooperative Law Enforcement Agreement is a cross-deputization agreement between the Assiniboine and Sioux Tribes of the Fort Peck Reservation, the Montana Highway Patrol, Roosevelt and Valley Counties, and the cities of Wolf Point and Poplar. Each party commissions certain officers, once they have received the requisite training, so that these officers may enforce the law regardless of which jurisdiction will ultimately handle the case. For example, if a tribal officer observes a state law crime being committed by a non-Indian, he is authorized to arrest, detain, and transport that person to the appropriate city or county detention facility. The person would then be processed under state law in state courts.

The Memorandum of Agreement among the State of Montana, the Confederated Salish & Kootenai Tribes, Flathead, Lake, Sanders, and Missoula Counties, and the Cities of Ronan, Hot Springs, Polson and the Town of St. Ignatius, is a cross-deputization agreement for traffic tickets only. Each jurisdiction's officers may only arrest and detain suspects that are likely under the authority of a different jurisdiction with the specific authorization of that jurisdiction. Traffic offenses are then processed in the appropriate court.

The Cooperative Agreement with the Blackfeet Tribe deputizes MHP officers to enforce Blackfeet traffic laws on the reservation against those within tribal jurisdiction. The current Agreement was executed on September 4, 2004. The Parties are the Blackfeet Tribe and the Montana Department of Justice, Highway Patrol.

There is one cooperative law enforcement agreement the Attorney General approved but to which the Highway Patrol is not a party. The Agreement, between the Northern Cheyenne Tribe and Big Horn County, is a local impact mitigation agreement pursuant to which the Tribe will fund a position with the Sheriff's office for additional enforcement at the Tribe's Tongue River trust property. The agreement also cross-deputizes tribal and county officers to handle offenses that may occur on the Tongue River trust property. The Agreement was signed on June 26, 2008."

Effect on Native Victims/Survivors of DV/SA: Without cross-deputization, Native victims do not receive intervention by law enforcement in domestic disputes and sexual assault cases in a timely manner. Women are more likely to be willing to speak with a Domestic Violence or Sexual Assault advocate/program immediately after an incident. In those cases where a victim is more likely to call law enforcement first, the opportunity to learn about advocacy is lost.

In the cases where cross-deputization does exist, the reciprocity is for traffic violations only. Again, this has a tremendous negative impact on victims and survivors of sexual assault and domestic violence.

The Major Crimes Act of 1885

The Major Crimes Act reduced the internal sovereignty of Native Tribes by removing their ability to try and to punish serious offenders in Indian country. The theory



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underlying it was that Indian Tribes were not competent to deal with serious issues of crime and punishment. The Major Crimes Act places 14 major crimes under federal jurisdiction if they are committed by a Native American against another Native American in Native territory.

The Major Crimes are:

- | | |
|---------------------------------------|---|
| 1. Murder | 8. Assault with a deadly weapon |
| 2. Manslaughter | 9. Assault resulting in serious bodily injury |
| 3. Kidnapping | 10. Assault against a minor under the age of 16 |
| 4. Maiming | 11. Arson |
| 5. Felony under US Code | 12. Burglary |
| Ch. 109a (Sexual Abuse) | 13. Robbery |
| 6. Incest | 14. Felony Crimes under Chapt. 18 ss661 |
| 7. Assault w/ intent to commit murder | (felony crimes committed at sea or in a U.S. Territory or Possession) |

Effect on Native Victims/Survivors of DV/SA: Due to the ineffectiveness rendered to Tribal Courts under this law, victims do not receive adequate justice in Tribal Courts. It isn't that these courts do not wish to punish to a fuller extent, but federal law ties the hands of the Tribal Judiciary in limiting sentencing.

Public Law 280 - commonly referred to as PL280:

Public Law 280 (1953) transferred federal criminal jurisdiction over all offences involving Native Americans in Indian Country to state governments. PL-280 gave 7 states – California, Minnesota, Nebraska, Oregon, Wisconsin and Alaska (upon statehood in 1959) — extensive criminal and civil jurisdiction over Indian Country. In Montana, PL-280 is applied only on the Flathead Reservation.

“The Bureau of Indian Affairs (BIA), however, reduced funding to tribal authorities as a result of the shift in jurisdiction. This has led to a situation where tribal and state authorities have not received sufficient funds to assume their respective law enforcement responsibilities, resulting in a sense of ‘lawlessness’ in some communities and difficult relations between tribal and state officials.”

Maze of injustice: The failure to protect Indigenous women from sexual violence in the USA. © Amnesty International Publications, 2007

Effect on Native Victims/Survivors of DV/SA: Tribal Law Enforcement agencies lack the funds in order to maintain enough officers to patrol reservations in a safe and timely manner. Inadequate staffing and lack of training impact response times to calls of domestic violence and sexual assaults. Tribal Law Enforcement agencies need larger infusions of capital in order to ensure staffing, training and sufficient patrolling of reservation lands.



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Indian Civil Rights Act of 1968

This law limits the penalty which can be imposed by tribal courts for any offence – including murder or rape — to a maximum of one year's imprisonment and a US\$5,000 fine. In practice, tribal justice systems are only equipped to handle less serious crimes. As a result of this limitation on their custodial sentencing powers, some tribal courts are less likely to prosecute serious crimes, such as sexual violence. The average prison sentence for rape handed down by state or federal courts is between eight years, eight months and 12 years, 10 months respectively.

Effect on Native Victims/Survivors of DV/SA: Already seriously underreported crimes, Native women are less likely to report domestic violence or sexual abuse as they feel that these crimes will not be prosecuted; and if they are, the perpetrators are not adequately held accountable.

Oliphant v. Suquamish (1978)

In 1978, the Supreme Court ruled that tribal courts could not exercise criminal jurisdiction over non-Indian US citizens. This ruling effectively strips tribal authorities of the power to prosecute crimes committed by non-Indian perpetrators on tribal land.

- Tribal courts are the most appropriate forums for adjudicating cases that arise on tribal land; state and federal authorities often do not prosecute cases of sexual violence that arise on tribal land and fall within their exclusive jurisdiction. This situation is of particular concern given the number of reported crimes of sexual violence against American Indian women involving non-Indian men.
- Tribal police do have limited powers of arrest over non-Indian suspects in some states. They also retain the power to detain non-Indian suspects in Indian Country in order to transfer them to either federal or state authorities, but this is not generally understood by tribal, state or federal officials.

Effect on Native Victims/Survivors of DV/SA: A majority of the perpetrators of violence against Native women are not Native or are of another Tribe. Without the ability to prosecute these crimes, many perpetrators are not held accountable for their acts.

Duro v. Reina (1990)

Justice Kennedy delivered this majority ruling:

"We address in this case whether an Indian tribe may assert criminal jurisdiction over a defendant who is an Indian but not a tribal member. We hold that the retained sovereignty of the tribe as a political and social organization to govern its own affairs does not include the authority to impose criminal sanctions against a citizen outside its own membership."



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Effect on Native Victims/Survivors of DV/SA: This means that should an enrolled member of a particular Tribe commit a crime within a reservation not his own, he cannot be prosecuted by the Tribal Court of that reservation. Again, victims are left without justice.

Adam Walsh Act also known as PL 109-280 (2006)

Quoted material from the National Congress of American Indians website - <http://www.ncai.org/Adam-Walsh-Act.251.0.html>

"The Adam Walsh Child Protection and Safety Act of 2006, P.L. 109-248, contains a section that requires tribal governments to affirmatively elect to comply with the mandates of the Act by July 27, 2007. If a tribe fails to pass a resolution stating its intention to comply with the Act by this date, the tribe will be treated as though it has delegated its authority under the Act to the State. *The state would then have the right to enter tribal lands to carry out and enforce the requirements of the Act.* A tribe that passes a resolution choosing to opt-in to participation in the national sex offender registry will have several years to develop a system to come into compliance with the requirements of the Act.

If a tribe elects to comply with the Act, it will be required to maintain a sex offender registry that includes a physical description, current photograph, criminal history, fingerprints, palm prints, and a DNA sample of the sex offender. Participating tribes will also be required to comply with the notification requirements established in the Act and maintain a web site making sex offender registry information available to the public. The Department of Justice will have some grant money available to help participating jurisdictions (including tribes) to build a registry and come into compliance with the law. Tribes that opt-in will also have the option of collaborating with other jurisdictions to share the burdens of maintaining a sex-offender registry." According to the US DOJ, all seven Tribal Councils in Montana have elected to comply with the Act. (http://www.ojp.usdoj.gov/smart/pdfs/tribal_govt_elections.pdf)

Effect on Native Victims/Survivors of DV/SA: Despite the challenges to Tribal sovereignty, the Act is intended to provide a feeling of safety for victims and their families. As recently as January 14, 2009 two offenders who had fled to the Blackfeet reservation, presumably to avoid sex offender registration, were arrested under the Adam Walsh Act for failure to comply with mandatory registration in Missoula and Cascade counties.